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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/003,970

Applicant(s)

KUEN ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-35 is/are rejected.
- 7) ☒ Claim(s) 5-7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 25 August 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5,7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *See Continuation Sheet*.

Continuation of Attachment(s) 6). Other: Examiner marked-up copies of: Figures 1 and 5 of USPN 6186996; Figure 2 of USPN 5899894; Figure 2 of USPN 5624426; Figure 3 of FR 2699813.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1, 8-10, 14, 16-19, 26, and 27 have been considered but are moot in view of the new ground(s) of rejection. The previous rejection is withdrawn based on applicant's persuasive arguments, specifically page 22 through the first paragraph of page 23.

Allowable Subject Matter

2. The indicated allowability of claims 2-4, 11-13, 15, 20-25, and 28-32 is withdrawn in view of Roe USPN 5624426, Martin USPN 6186996, Martin FR 2699813, St. Louis et al. USPN 599433, and Nishikawa et al. USPN 5591155. Rejections based on the newly cited references follow.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1, 8, 9, 10-14, 16, 18, 26, 33, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe et al USPN 5624426.

As to claim 1, Roe discloses a disposable an absorbent article capable for personal wear comprising:

a liquid permeable inner layer **24** adapted for contiguity with the wearer's skin,
an outer layer **26** in opposed relation with the inner layer,
an absorbent body for absorbing liquid body waste **28** disposed between the inner and outer layers; and

a pair of containment flaps **32** having a base secured to the inner layer of the article (at elements **66** and **69** Figure 2) and in spaced relation with each other (Figure 1, elements **32**). Each flap has a base, examiner has designated as **B1/B2**, Figure 2, secured to the inner layer of the article and a distal end, examiner has designated as **D**. At least a portion of the distal end **D** is capable of being moved relative to the base to a position in which the distal end **D** is spaced from the inner layer of the article (Figure 2 shows the distal end **D** spaced from the base **B1/B2** and inner layer **24**).

Roe further discloses the containment flaps comprise a first layer **82** extending from the base **B1** to the distal end **D** of the flap **32**. The flap first layer has a lateral surface (examiner has designated as **L**, Figure 2) and a medial surface (examiner has designated as **M**, Figure 2). Roe further discloses the containment flaps comprise a liquid permeable second layer **80** (Roe discloses liquids may pass through the inner wall **80**, col. 8, lines 41-45, indicating wall **80** is liquid permeable) in opposed relation with the medial surface **M** of the flap first layer. The flap second layer **80** is free from

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fixed engagement with at least a portion of the medial surface **M** of the flap first layer (Figure 2) to define a surge chamber there between (examiner has designated as **C**), which is capable of receiving liquid body waste, since Roe discloses liquids may pass through the inner wall 80 (col. 8, lines 41-45). The liquid permeable portion of the inner layer **24** is interposed between the surge chamber **C** and the absorbent body **28**, Figure 2.

As to claim 8, Roe discloses the portion of the medial surface **M** of the flap first layer **82** extends from the base of the flap **B1** generally to the distal end of the flap **D** (Figure 2). The flap second layer **80** extends generally from the distal end of the flap **84** to the inner layer of the article **24** in spaced relation with the portion of the medial surface of the flap first layer **M** to define the surge chamber **C** there between (Figure 2). The inner layer of the article **24** further defines the surge chamber **C** (Figure 2).

As to claim 9, the flap second layer **80** is secured to the inner layer **24** of the article in spaced relation with the flap first layer **82**, Figure 2.

As to claim 10, see Figure 2 area examiner has designated as **C**.

As to claim 11, Roe shows in Figure 2 the flap second layer **80** is secured to the lateral surface of the flap first layer **82**. However, Roe discloses the overlapping materials may be reversed from the configuration shown in Figure 2 in order to provide different containment and/or skin friendliness characteristics (col. 11, lines 5-8), in which

case the flap second layer would be secured to the medial surface of the flap first layer in spaced relation with the base of the flap by bond **56** to define a seam (examiner has designated as **S**) between the flap second layer **80** and the medial surface **M** of the flap first layer **82**. The portion of the medial surface **M** of the flap first layer (free from fixed engagement with the flap second layer) is extending between the base of the flap and the seam **S** (Figure 2). The flap second layer extends between the inner layer of the article and the seam in spaced relation with the portion of the medial surface of flap first layer to define the surge chamber **C** there between (Figure 2). The inner layer **24** of the article further defines the surge chamber **C** (Figure 2).

As to claim 12, the flap second layer **80** is secured to the flap first layer **82** generally at the distal end **D** of the flap to define the seam **S**. The flap second layer is further secured to the inner layer **24** of the article in spaced relation with the flap first layer **82**.

As to claim 13, see Figure 2 area examiner has designated as **C**.

As to claim 14, the flap second layer **80** further extends (inwardly towards a longitudinal center of the article) in opposed relation with the lateral surface **L** of the flap first layer **82**, Figure 2.

As to claim 16, Roe discloses the flap second layer **80** is constructed of a nonwoven material (col. 9, lines 41-44).

As to claim 18, Roe discloses the use of microporous films for the inner wall **80** (flap second layer; col. 4, lines 18-35).

As to claim 26, Roe discloses a disposable absorbent article capable of being used as toilet training pants comprising an anterior side **36**, a posterior side **38**, and a crotch region **37** disposed longitudinally there between, a central waist opening, and a pair of leg openings (at longitudinal edges **50**, Figure 1),

an inner layer **24** extending from the anterior side through the crotch region to the posterior side and being adapted for contiguity with the wearer's skin, at least a portion of the inner layer being liquid permeable (col. 6, lines 43-46);

an outer layer **26** extending from the anterior side through the crotch region to the posterior side in opposed relation with the inner layer (Figure 1);

an absorbent body **28** disposed between the inner and outer layers for absorbing liquid body waste; and

a pair of containment flaps **32** secured to the inner layer of the article (at elements **66** and **69** Figure 2) and in laterally spaced relation with each other between the leg openings and extending generally longitudinally from the anterior side through the crotch region to the posterior side of the article (Figure 1, elements **32**; col. 8, lines

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32-36). Each flap has a base, examiner has designated as **B1/B2**, Figure 2, secured to the inner layer of the article and a distal end, examiner has designated as **D**. At least a portion of the distal end **D** is capable of being moved relative to the base to a position in which the flap is spaced from the inner layer of the article (Figure 2 shows the flap distal end **D** spaced from the base **B1/B2** and inner layer **24**).

Roe further discloses the containment flaps comprise a first layer **82** extending from the base **B1** to the distal end **D** of the flap **32**. The flap first layer has a lateral surface (examiner has designated as **L**, Figure 2) and a medial surface (examiner has designated as **M**, Figure 2). Roe further discloses the containment flaps comprise a liquid permeable second layer **80** (Roe discloses liquids may pass through the inner wall **80**, col. 8, lines 41-45, indicating wall **80** is liquid permeable) in opposed relation with the medial surface **M** of the flap first layer. The flap second layer **80** is free from fixed engagement with at least a portion of the medial surface **M** of the flap first layer (Figure 2) to define a surge chamber there between (examiner has designated as **C**), which is capable of receiving liquid body waste, since Roe discloses liquids may pass through the inner wall **80** (col. 8, lines 41-45). The liquid permeable portion of the inner layer **24** is interposed between the surge chamber **C** and the absorbent body **28**, Figure 2.

As to claim 33, Roe discloses each containment flap 32 comprises an elastic member **60** to bias the distal end **D** of the flap toward a position spaced from the base **B1/B2** of the flap (col. 9, lines 50-52).

As to claim 35, Roe discloses each containment flap 32 comprises an elastic member **60** to bias the distal end **D** of the flap toward a position spaced from the base **B1/B2** of the flap (col. 9, lines 50-52).

5. Claims 20-25 and 34 are rejected under 35 U.S.C. 102(a) as being anticipated by Martin USPN 6186996.

As to claim 20, Martin discloses a disposable absorbent article 1 for personal wear comprising:

- an inner layer **18** adapted for contiguity with the wearer's skin, at least a portion of the inner layer being liquid permeable (col. 6, lines 12-16);

- an outer layer **2** in opposed relation with the inner layer (Figure 5);

- an absorbent body **4** disposed between the inner and outer layers for absorbing liquid body waste; and

- a pair of containment flaps (examiner has designated as **F**, Figures 1 and 5) secured to the inner layer **18** of the article (Figure 5) and in laterally spaced relation

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with each other. Each flap has a base **25''**, Figure 5, secured to the inner layer of the article and a distal end, examiner has designated as **D**, Figure 5. At least a portion of the distal end **D** is capable of being moved relative to the base to a position in which the flap is spaced from the inner layer of the article (Figure 5 shows the flap distal end **D** spaced from the base **25''** and inner layer **18''**).

Martin further discloses the containment flaps comprise a first layer **28''** extending from the base **25''** to the distal end **D** of the flap **F**. The flap first layer has a lateral surface (examiner has designated as **L**, Figure 5) and a medial surface (examiner has designated as **M**, Figure 5). Martin further discloses the containment flaps comprise a liquid permeable second layer **3** (col. 3, lines 42-43) at least partially surrounding the lateral and medial surfaces of the flap first layer (Figure 5). The flap second layer **3** is free from fixed engagement with at least a portion of the medial surface **M** of the flap first layer (Figure 5) to define a surge chamber **27''** there between which is capable of receiving liquid body waste (col. 5, lines 19-23).

As to claim 21, Martin discloses the flap first layer **28''** is formed separate from the inner layer **18''** of the article (Figure 5).

As to claim 22, Martin discloses the flap second layer **3** is formed separate from the inner layer **18**" of the article (Figure 5).

As to claim 23, Martin discloses in Figure 5, the flap second layer **3** substantially overlays the flap first layer **28**", therefore, the flaps second layer **3** inhibits or restricts the contact of the flap first layer **28**" with the wearer's skin.

As to claim 24, Martin discloses the flap second layer **3** overlays substantially the entire lateral surface of the flap first layer **28**" (Figure 5).

As to claim 25, Martin discloses the flap first layer **28**" is substantially liquid impermeable (col. 6, lines 16-20).

As to claim 34, Martin discloses each containment flap **F** comprises an elastic member **17** to bias the distal end **D** of the flap toward a position spaced from the base **25**" of the flap (Figure 5 and col. 5, lines 19-23).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4, 14, 15, 28, and 29 are rejected under 35 U.S.C. 103(b) as being unpatentable over Martin FR2699813 (all references to specific pages are to translated version, references to elements are to foreign patent) in view of St. Louis et al. USPN 5993433.

As to claim 1, Martin discloses the present invention substantially as claimed. However, Martin does not disclose the first layer **24** extends from a base adjacent the liner. Rather the base **16**, from which the first layer **24** extends is spaced apart from the base of the liner **4** because the liner is not bonded to the outer cover at the periphery of the diaper (Figure 3). St. Louis discloses an absorbent article with barrier flaps where the liner and outer cover are bonded at the periphery of the diaper, therefore the flaps extend from the base of the liner (St. Louis, Figures 1 and 4). St. Louis discloses bonding the liner (topsheet) and outer cover (backsheet) allow the liner and outer cover to retain and hold the absorbent layer (retention portion) between the liner and outer cover (col. 9, lines 47-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the liner of Martin to extend to the

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diaper periphery for the benefits disclosed in St. Louis. Additionally, with the liner extending to the diaper periphery, this provides a stronger longitudinal edge for the securement of the barrier flaps.

Martin/St. Louis discloses a disposable an absorbent article capable for personal wear comprising:

- a liquid permeable inner layer **4** adapted for contiguity with the wearer's skin,
- an outer layer **2** in opposed relation with the inner layer,
- an absorbent body for absorbing liquid body waste **4** disposed between the inner and outer layers; and

- a pair of containment flaps **14** having a base secured to the inner layer of the article (Martin Figure 3) and in spaced relation with each other (Martin Figure 1). Each flap has a base **16**, secured to the inner layer of the article and a distal end **21**. At least a portion of the distal end **21** is capable of being moved relative to the base to a position in which the distal end **21** is spaced from the inner layer of the article (Figure 3 shows the distal end **21** spaced from the base **16** and inner layer **4**).

Martin/St. Louis further discloses the containment flaps comprise a first layer **24** extending from the base **16** to the distal end **21** of the flap **14**. The flap first layer has a lateral surface (examiner has designated as **L**, Figure 3) and a medial surface (examiner has designated as **M**, Figure 3). Martin/St. Louis further discloses the containment flaps comprise a liquid permeable second layer **22** (Martin discloses the material used for the second layer **22** is a hydrophobic nonwoven web, which may allow the passage of liquid and the liquid-impermeable second layer is affixed to the flap first

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layer to render that portion liquid-impermeable (Martin page 14, paragraph 2)) in opposed relation with the medial surface **M** of the flap first layer. The flap second layer **22** is free from fixed engagement with at least a portion of the medial surface **M** of the flap first layer (Figure 3) to define a surge chamber **13** there between, which is capable of receiving liquid body waste. The liquid permeable portion of the inner layer **22** is interposed between the surge chamber **13** and the absorbent body **3**, Figure 3.

As to claim 2, Martin/St. Louis discloses the flap second layer **22** has a width (the examiner interprets the width dimension as being measured transversely of the absorbent core, along line II – Figure 1) greater than a width of the portion of the medial surface of the flap first layer **24** (Figure 3).

As to claim 3, Martin/St. Louis discloses the portion of the medial surface of the flap first layer **24** extends substantially from the base of the flap **16** to the distal end of the flap **21** (Figure 3).

As to claim 4, Martin/St. Louis discloses the flap second layer **22** is secured to the medial surface **M** of the flap first layer **24** at a first seam (examiner has designated as **S**) therebetween, generally at the distal end of the flap (Figure 3).

As to claim 14, Martin/St. Louis discloses the flap second layer **22** further extends in opposed relation (top to bottom) with the lateral surface **L** of the flap first layer **24** (Figure 3).

As to claim 15, Martin/St. Louis discloses the flap second layer **22** overlays substantially the entire later surface **L** of the flap first layer **24** (Figure 3).

As to claim 28, Martin discloses the present invention substantially as claimed. However, Martin does not disclose the first layer **24** extends from a base adjacent the liner. Rather the base **16**, from which the first layer **24** extends is spaced apart from the base of the liner **4** because the liner is not bonded to the outer cover at the periphery of the diaper (Figure 3). St. Louis discloses an absorbent article with barrier flaps where the liner and outer cover are bonded at the periphery of the diaper, therefore the flaps extend from the base of the liner (St. Louis, Figures 1 and 4). St. Louis discloses bonding the liner (topsheet) and outer cover (backsheet) allow the liner and outer cover to retain and hold the absorbent layer (retention portion) between the liner and outer cover (col. 9, lines 47-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the liner of Martin to extend to the diaper periphery for the benefits disclosed in St. Louis. Additionally, with the liner extending to the diaper periphery, this provides a stronger longitudinal edge for the securement of the barrier flaps.

Martin/St. Louis discloses a disposable absorbent article **1** for personal wear comprising:

a liner **4** adapted for contiguity with the wearer's skin, at least a portion of the liner being liquid permeable (Martin page 9, paragraph 2);

an outer cover **2** in opposed relation with the liner (Martin Figure 3);

an absorbent body **3** disposed between the liner and outer cover for absorbing liquid body waste, the absorbent body being secured to the liner and being further secured to the outer cover about a periphery of the absorbent body (Martin Figure 3; page 8, paragraphs 2 and 3; page 9 paragraph 2); and

a pair of containment flaps **14** secured to the liner **4** of the article (Martin Figure 3) in spaced relation with each other (Martin Figure 1) and comprising:

a first layer **24** extending from a base **16** adjacent the liner to a distal end **21** of the flap. At least a portion of the distal end **21** is spaced from the liner **4**. The flap first layer **24** has a lateral surface (Martin examiner has designated as **L**, Figure 3) and a medial surface (Martin examiner has designated as **M**, Figure 3),

a liquid permeable second layer **22** - Martin discloses the material used for the second layer **22** is a hydrophobic nonwoven web, which may allow the passage of liquid and the liquid-impermeable second layer is affixed to the flap first layer to render that portion liquid-impermeable (Martin page 14, paragraph 2). The second layer overlays the lateral surface of the flap first layer from the base of the flap to the distal end **21** of the flap and is secured to the lateral surface **L** (Martin Figure 3).

The flap second layer **22** extends in opposed relation with the medial surface **M** of the flap first layer **24** from the distal end **D** of the flap to the liner **4**.

The flap second layer **22** is secured to the medial surface **M** of the flap first layer at a first seam (Martin the examiner has designated as **S**, Figure 3) adjacent the distal end **D** of the flap and is further secured to the liner **4** in laterally inward spaced relation with the base of the flap so that the liner **4**, the flap first layers **24** extending between the seam **S** and the base **16**, and the flap second layer **22** extending between the seam **S** and liner **4** together form a surge chamber **13** for receiving liquid body waste; and

an elastic member **20** secured between the flap first layer **24** and the flap second layer **22** generally at the distal end **21** of the flap to bias the distal end of the flap toward a position in which the flap extends from the liner **4**.

As to claim 29, Martin/St. Louis discloses the flap first layer **24** is substantially liquid impermeable (Martin page 14, paragraph 2).

8. Claims 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin FR2699813 in view of St. Louis and further in view of Nishikawa et al. USPN 5591155.

As to claim 30, Martin discloses the present invention substantially as claimed. However, Martin does not disclose the first layer **24** extends from a base adjacent the liner. Rather the base **16**, from which the first layer **24** extends is spaced apart from the base of the liner **4** because the liner is not bonded to the outer cover at the periphery of

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the diaper (Figure 3). St. Louis discloses an absorbent article with barrier flaps where the liner and outer cover are bonded at the periphery of the diaper, therefore the flaps extend from the base of the liner (St. Louis, Figures 1 and 4). St. Louis discloses bonding the liner (topsheet) and outer cover (backsheet) allow the liner and outer cover to retain and hold the absorbent layer (retention portion) between the liner and outer cover (col. 9, lines 47-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the liner of Martin to extend to the diaper periphery for the benefits disclosed in St. Louis. Additionally, with the liner extending to the diaper periphery, this provides a stronger longitudinal edge for the securement of the barrier flaps.

Martin/St. Louis discloses an absorbent article capable of being used as a toilet training pant. Martin/St. Louis discloses securing an absorbent body 3 between a liner 4 and an outer cover 2 and securing the liner to the outer cover 2 about a periphery of the absorbent body (Martin Figure 3; page 8, paragraphs 2 and 3; page 9 paragraph 2). Martin/St. Louis further discloses the liner 4 is adapted for contiguity with the wearer's skin and is at least in part liquid permeable (Martin page 9, paragraph 2). Martin/St. Louis discloses the liner 4 and outer cover 2 together defining an anterior side 9, a crotch region 8, and a posterior side 10 of the training pants.

However, Martin/St. Louis does not disclose a method of manufacturing toilet training pants further comprising securing front and rear side panels respectively to the anterior and posterior sides of the training pants to extend laterally outward from the liner and outer cover, and securing adjacent front and rear side panels together so that

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the side panels, together with the anterior side, crotch region and posterior side of the pants form a central waist opening and a pair of leg openings of the training pants, the crotch region being disposed between the leg openings. Nishikawa discloses a method of manufacturing a training pant **1** comprising securing front and rear side panels **10** respectively to the anterior **40**, and posterior **41** sides of the training pants to extend laterally outward from the liner and outer cover (Nishikawa col. 7, lines 41-46; Figure 6), and securing adjacent front and rear side panels together so that the side panels, together with the anterior side **40**, crotch region **42**, and posterior side **41** of the pants form a central waist opening and a pair of leg openings of the training pants (Nishikawa col. 7, line 60 through col. 8, line 5; and Figure 1). Nishikawa discloses this method of manufacturing is desired to provide a training pant having elasticized panels and an improved seam, which is strong enough to remain sealed under use, yet can be torn to be removed from the wearer after soiling (Nishikawa col. 8, lines 53-59). It would have been obvious to one of ordinary skill in the art at the time the invention was made to manufacture the training pants of Martin/St. Louis in the manner disclosed in Nishikawa for the benefits disclosed in Nishikawa.

Martin/St. Louis/Nishikawa disclose securing a pair of containment flaps **14** to the liner in spaced relation with each other (Martin Figures 1 and 3). Each of the flaps are formed by: securing a first layer of the flap **24** to the liner to define a base of the flap **16**; overlaying a liquid permeable second layer **22** - Martin discloses the material used for the second layer **22** is a hydrophobic nonwoven web, which may allow the passage of

liquid and the liquid-impermeable second layer is affixed to the flap first layer to render that portion liquid-impermeable (Martin page 14, paragraph 2) - over a lateral surface (examiner has designated as **L**, Martin Figure 3) of the flap first layer from the base of the flap to a distal end **21** thereof.

The method further comprises securing the flap second layer **22** to the lateral surface **L** of the flap first layer **24**; wrapping the flap second layer **22** around the distal end of the flap **21**; overlaying the flap second layer over a medial surface **M** of the flap first layer **24** from the distal end of the flap **21** to the liner.

The method further comprises securing the flap second layer **22** to the liner **4** in laterally inward spaced relation with the base of the flap **16** so that the liner **4**, the medial surface of the flap first layer extending between the distal end of the flap **21** and the base **16**, and the flap second layer **22** extending between the distal end of the flap **21** and the liner **4** together form a surge chamber **13** for receiving liquid body waste.

The method further comprises securing an elastic member **20** secured between the flap first layer **24** and the flap second layer **22** to bias the distal end of the flap **21** to a position in which the distal end is spaced from the liner **4**.

As to claim 31, Martin/St. Louis/Nishikawa discloses the step of securing the flap second layer **22** to the medial surface of the flap first layer **24** at a first seam (examiner has designated as **S**) spaced from the base of the flap **16** (page 14, paragraph 2). The step of securing the flap second layer to the liner **4** comprising securing the flap second layer to the liner in laterally inward spaced relation with the base of the flap (page 10,

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paragraph 3; Figure 3) so that the liner, the medial surface of the flap first layer extending between the seam and the base, and the flap second layer **22** extending between the seam and the liner together form a surge chamber **13** for receiving liquid body waste.

As to claim 32, Martin/St. Louis/Nishikawa discloses the step of securing an elastic member between the flap first layer **24** and the flap second layer **22** comprising securing an elastic members **19** and **20** between the flap first layer **24** and the flap second layer **22** generally at the distal end **21** of the flap to bias the distal end of the flap so that the flap extends from the liner **4** (pages 11-13).

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roe in view of Kleinschmidt et al. USPN 6547773. Roe discloses the present invention substantially as claimed. However, Roe does not disclose the flap second layer is constructed of a spunbond polypropylene nonwoven web. Kleinschmidt discloses barrier cuffs comprising a spunbond polypropylene nonwoven web for the benefit of providing an adequate barrier for containment and softness for comfort (Kleinschmidt col. 2, lines 19-20 and col. 8, lines 11-33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the leg cuffs of Roe to incorporate a spunbond polypropylene nonwoven web for the benefits disclosed in Kleinschmidt.

10. Claims 19 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe in view of Palumbo USPN 5899894. Roe discloses the present invention substantially as claimed. Roe discloses the flap first and second layers may be constructed of different materials (col. 9, lines 48-49). Roe further discloses the use of nonwovens, microporous films, and hydrophobic materials. Roe indicates the flap second layer is liquid permeable. However, Roe does not specifically disclose the flap first layer is substantially liquid impermeable. Palumbo discloses an absorbent article with containment flaps 11 having a first (outer) layer (examiner has designated as B, Figure 2), and a second (inner) layer (examiner has designated as A, Figure 2). Palumbo discloses the flap second layer is liquid permeable and the flap first layer is substantially liquid impermeable for the benefits of obtaining improved containment of lateral leakage both of liquids and of solid excrement (col. 4, lines 36-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the flap first layer of Roe from liquid impervious materials for the benefits disclosed in Palumbo.

Allowable Subject Matter

11. Claims 5-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the

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indication of allowable subject matter: The limitation in claims 5 and 6 referencing the flap second layer being further secured to the medial surface of the flap first layer at a second seam spaced from the first seam is neither anticipated nor rendered obvious by the prior art of record. Martin FR 2699813 discloses a seam (examiner designated S in Figure 3) at a distal end, but does not disclose the medial surface for the flap first layer secured to the flap second layer to form a second seam, which is formed near the base of the flap. The examiner understands the two layers to form a seam at the distal edge and another seam at the base edge, however the seam at the base edge is between the previously designated lateral surface of the flap first layer and the flap second layer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens
Examiner
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January 25, 2004